

II. RESPONSE TO OFFICE ACTION

A. Status of the Claims

Claims 30-49 were pending prior to the final Office Action dated November 2, 2005. Claims 31, 41, and 44-47 have been amended to recite “about 100 pg”, without prejudice or disclaimer. Support for the amendments may be found throughout the specification at least at page 10, line 14 and originally filed claim 42.

While claims 32 and 33 were already clear and definite, they were amended to replace “viral” with “virus” because claim 31 uses the term “virus particle” in the context of claims 32 and 33. No new matter has been added. Applicants reserve the right to pursue the claims prior to the amendment in a continuation application.

B. Claims 31 and 44-49

The Action rejects claims 31 and 44-49 under 35 U.S.C. § 112, first paragraph, as not providing enablement for the lower range. The Action acknowledges that the declaration substantiates the assertion that the disclosed method produces a product with about 100 pg of contaminating human DNA per 10^{12} virus particles. Applicants and their representative appreciate the Examiner’s indication that “about 100 pg” would overcome the rejection. While Applicants do not agree with this rejection, to expedite prosecution of the current case, claims 31 and 44-48 have been amended to recite “about 100 pg.”

Furthermore, Applicants also note that the rejected claims, as well as other claims, recite the term “about,” which has been interpreted by at least one court in a biotechnology case to mean within the standard error of the measurement technique. *See, e.g., Hybritech Inc. v. Abbott Labs.*, 4 U.S.P.Q.2d 1001, 1013 (C.D.Cal. 1987), *aff’d*, 849 F.2d 1988 (Fed. Cir. 1988).

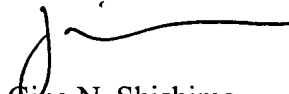
Applicants respectfully request this rejection be withdrawn.

CONCLUSION

Applicants believe that the foregoing remarks fully respond to all outstanding matters for this application. Applicants respectfully request that the rejections of all claims be withdrawn because they are in condition for allowance. At the very least, Applicants request entry of these amendments in order to place the case in better form for an appeal.

Should the Examiner desire to sustain any of the rejections discussed in relation to this Response, the courtesy of a telephonic conference between the Examiner, the Examiner's supervisor, and the undersigned attorney at 512-536-3081 is respectfully requested.

Respectfully submitted,



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Date: November 30, 2005